IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.1662 OF 2006

Shri Kachradas Mohanlal Pokharna ..Petitioner

Versus

1.Shri Vilas Shankarrao Pingle & Ors. ..Respondents

Mr.R.N.Sanghavi i/b Sanghavi & Associates for petitioner

Mr.K.Y.Mandlik for respondents

CORAM : P.V.KAKADE, J.

DATE : 28th MARCH 2006

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. By this petition the order passed by the trial court below Exh.58 in pending trial passed on 25.11.2005 by Small Causes Court, Pune whereby application under Order 18 Rule 18 of C.P.C. came to be rejected is challenged.

3. It appears from the record that the application was made by the defendant after the evidence of plaintiffs was over requesting the court to inspect the property on the ground that plaintiffs had made allegedly false statement in the course of his evidence and therefore, the defendant wanted to bring on record the said facts through the means of inspection by the Court of the suit premises.

4. The application was contested and after hearing both the parties the trial judge was of the view that the defendant cannot seek assistance of the court for collection of evidence and cannot be allowed to be tools in the hands of the parties to collect the evidence and on this ground it was found that no justifiable ground is available and as such application came to be rejected.

5. The learned counsel for the petitioner sought to put reliance on the ruling of the Supreme Court in the case of **Ugma Singh and Anr. Vs. Kesrimal and Ors reported in AIR 1971 SC 2540** wherein the apex court has laid down that when the judgment was fully based on the personal inspection from the court then in that case the

trial cannot said to be vitiated. There cannot be two opinions regarding the ratio laid down by the apex court and therefore this is not applicable to the present case. The provision of Order 18 Rule 18 of CPC is discretionary power to court to meet the end of justice. In my considered view, no inference is called for in writ jurisdiction under Article 227 of the Constitution of India, especially when the discretion is bound to be based upon fundamental principles of jurisdiction to the effect that the court cannot be tools in the hands of any parties for the purpose of collecting any evidence. In this regard the defendant would definitely have several other occasions to bring on record the false suit, if any which appear in the evidence on the plaintiff.

6. Under the circumstances, I do not see any reason why the impugned order should be interfered with. In the result the petition stands dismissed with no order as to costs.